REMARKS

I.   Introduction

Claims 1-44 and 47-76 are currently pending the application. Independent claims 1 and 34 have been amended to obviate the *In re Bilski*, 35 U.S.C. § 101 rejection. Claims 18, 22, 24, 29, 34, 39, and 43 have been amended from the "if-else format" objected to under 35 U.S.C. § 112 and instead have used the positive "when" format as suggested by the Examiner in paragraph 31 of the Office Action. It is believed that the rejection under 35 U.S.C. § 101 and the objections under 35 U.S.C. § 112 have been obviated by the amendments. Each of these is specifically addressed below.

II.   Claim Rejections Under 35 U.S.C. § 101

Independent claims 1 and 34 have been rejected under 35 U.S.C. § 101 under the test of *In re Bilski* as being nonstatutory. The claims have been amended to add that generation of risk status is in an administrative system that has a centralized server having a risk assessment module. The basis for this is the published specification numbered paragraph [0019] and [0035]. It is acknowledged that *Bilski* does say that a system or process must either be tied to a machine or transform underlying subject matter, such as an article or materials. Here the patient data risk is tied to a machine. In this instance the claim amendments to claims 1 and 34 are in the body of the claim, not to the preamble, and they clearly tie the claim to a machine under category (1) defined by *Bilski* as statutory subject matter. It is submitted that under the Court's Opinion amended claims 1 and 34 are clearly statutory, and are now in accord with *In re Bilski*. Applicant notes to the Examiner in *Bilski* 545 F.3d 943 in addressing claim 62 of *Abele's Bilski* said that dependent claims were drawn to a patent eligible subject matter where it specified that the said data is x-ray attenuation data produced in two-dimensional fields by computerized "tomography scanner". Clearly if this dependent claim in *Abele* as commented on by *Bilski* illustrates proper 35 U.S.C. § 101 subject matter, amended claims 1 and 34 here represent proper subject matter under 35 U.S.C. § 101.

III.   Claim Objection Under 35 U.S.C. § 112

The Examiner has objected to those claims having the "if-then-else" format as indefinite. Applicant has omitted the conditional "if" and stated the positive "when" format as suggested by the Examiner at paragraph 31 of the Office Action. This renders the objection to claims 18, 22, 24, 26, 29, 39, and 43 moot.

IV.   Claim Rejections Under 35 U.S.C. § 103

The Examiner has provided a new 35 U.S.C. § 103 rejection using three references (in some case four or five references) with the combination basically being Rao 1/Sato/Condurso. The Examiner acknowledges that Rao 1 does not disclose the following limitations.

- selecting a health care provider to attend said patient on the basis of risk status and

- transmitting directions to respective health care providers to attend the patient.

The Examiner argues that Sato teaches these, citing Figure 16, items S1101-1111 and related text. (Applicant disagrees as explained below). But even with this combination and the Examiner's interpretation of Rao 1/Sato, the Examiner acknowledges (page 5 of the Action) that Rao 1 and Sato together fail to disclose "wherein a direction is transmitted to a health care provider in response to non receipt of a confirmation that a previously directed health care provider has attended the patient within the corresponding time period". The Examiner cites for this missing limitation Condurso, which as explained below is <u>not</u> legal prior art against Applicant.

Applicant disagrees with the obviousness rejection and submits that it is improper on two bases. First, Applicant disagrees with the Examiner's conclusion as to the teachings of Sato at Figure 7 and related text as was explained in response to the previous Action, the reference portions of Sato actually state:

"S702: the management centre side 104 asks the patient side 101 about the treatment fee and past case history to be registered and the conditions such as the selection standard of a doctor to be registered and acquires information necessary to introduce a suitable doctor. S703: the management centre side 104 searches the electronic hospital doctor

15

> *database 604... and searches for a doctor in charge for each clinic section under the*
> *search condition of case history and desire of the patient."*

Selection based upon disease specialty is not selection on the basis of risk status.
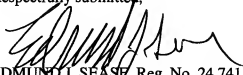
But even if the Examiner still urges otherwise with respect to Sato, the rejection fails because Condurso is <u>not</u> prior art against this Applicant. Condurso was filed August 25, 2004 and published March 2, 2006. The Examiner earlier acknowledged Applicant's claim to the benefit of a prior filed case under 35 U.S.C. § 119, which case was filed as a Paris Convention case, October 29, 2003. Thus, Applicant's § 119 priority date is <u>before</u> Condurso was filed. It is therefore not a proper reference. The Examiner can inspect Applicant's filed priority document and see that the disclosure is the same as the current application. Thus, the combination of references suggested by the Examiner fails to disclose essential elements of Applicant's claims if only properly applied references are considered. Under <u>KSR</u> missing elements in a combination of references, and no logic in support of by those missing elements as being obvious is an indicia that the invention is <u>not</u> obvious.

Applicants have made a sincere effort to limit the issues and amend the claims to comply with the Examiner's suggestions. A favorable response is solicited.

V.   Conclusion

No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Respectfully submitted,

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